N 72/1980-9

NOMINATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

JAMES E. JONES, JR., OF WISCONSIN, TO BE CHAIRMAN, SPECIAL PANEL ON APPEALS

NEWARK PUBLIC LIBRARY

AUGUST 1, 1980

DEC 4 1980

U. S. GOVT. PUBS.
DEPOSITORY 376

Printed for the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE
67-324 O WASHINGTON: 1980

Y4.L11/4:

COMMITTEE ON LABOR AND HUMAN RESOURCES

HARRISON A. WILLIAMS, Jr., New Jersey, *Chairman*

JENNINGS RANDOLPH, West Virginia	RICHARD S. SCHWEIKER, Pennsylvania
CLAIBORNE PELL, Rhode Island	JACOB K. JAVITS, New York
EDWARD M. KENNEDY, Massachusetts	ROBERT T. STAFFORD, Vermont
GAYLORD NELSON, Wisconsin	ORRIN G. HATCH, Utah
THOMAS F. EAGLETON, Missouri	WILLIAM L. ARMSTRONG, Colorado
ALAN CRANSTON, California	GORDON J. HUMPHREY, New Hampshire
DONALD W. RIEGLE, Jr., Michigan	
HOWARD M. METZENBAUM, Ohio	

LETITIA CHAMBERS, *Staff Director*
STEVEN J. SACHER, *General Counsel*
MARJORIE M. WHITTAKER, *Chief Clerk*
DAVID A. WINSTON, *Minority Staff Director*

NOMINATION

FRIDAY, AUGUST 1, 1980

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 10:55 a.m., Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senator Williams.

The CHAIRMAN. The committee will come to order.

We now will invite Prof. James E. Jones, Jr., to our deliberations.

We are pleased to conduct this hearing on the confirmation of Professor Jones to be Chairman of the Special Panel created by the Civil Service Reform Act of 1978. The Panel to be chaired by Professor Jones will be the administrative tribunal that will resolve cases in the Federal service which involve alleged violations of the Civil Rights Act, the Fair Labor Standards Act, the Age Discrimination in Employment Act, and the Rehabilitation Act. Where the Equal Employment Opportunity Commission and the Merit Systems Protection Board disagree over the proper way to reconcile the demands of these statutes, as opposed to the requirements of the Civil Service System, the Special Panel, to be comprised of its Chairman and one member each of the Commission and the Board will meet on an ad hoc basis to resolve those cases.

Professor Jones, we know you to be highly qualified for this position, and we will have an opportunity, I hope, to discuss some of Professor Jones' activities over the course of his distinguished career.

His biography and curriculum vitae will, of course, be made a part of the record of this hearing, and without any objection, we will also include the sections of the Civil Service Reform Act which create the Special Panel, provide for its jurisdiction, and the portion of the conference report of that act which discusses the role of the Special Panel.

I look forward to your statement, Professor Jones, and welcome you. I know that so many people who work here and have worked here have had the happiest associations with you over the years.

STATEMENT OF JAMES E. JONES, JR., NOMINEE FOR CHAIRMAN, SPECIAL PANEL ON APPEALS

Professor JONES. Mr. Chairman, thank you very much.

I am somewhat humbled after hearing Dr. Slaughter's presentation of the awesome responsibilities of the National Science Foundation and their future, and I feel a bit lonely here at the table here by myself, but bear with me.

The CHAIRMAN. Do you think Edes would help if he came up?

Professor JONES. He no longer is willing to staff for me.

I am grateful for this opportunity to appear before you today as the nominee for the Chair of the Special Panel created by the Civil Service Reform Act of 1978. I am especially pleased by your willingness to consider this matter at a time when there are so many other critical issues competing for your time and attention.

To be sure, I understand that having created this unique forum to assist in the resolution of EEO matters of concern to two major Federal agencies, the Merit Systems Protection Board and the Equal Employment Opportunity Commission, you would be eager to see the Special Panel in place and ready for such business as may come before it.

I am privileged to be offered this opportunity for future public service, and if confirmed, I will endeavor to serve to the best of my ability.

As you know, I come to you from the great State of Wisconsin, but I am one of her adopted sons. I was born in Little Rock, Ark., and educated in the public schools of Arkansas, Missouri, Michigan, Illinois, and Wisconsin.

World War II interrupted my college training almost before it got started, and I spent 3½ years in the Navy. I returned to Missouri in 1947, did college in 3 years, 1½ years of graduate work at the University of Illinois, and with a brand new master of arts in industrial relations in hand, I went to work for the Federal Government in the wage stabilization program in Chicago.

I might make a digression here. My boss in the Wage Stabilization Board in Chicago was a fellow affectionately known as Duffy by his friends. He goes in the real world by the name of Sam Edes, and he has a son that you know about. It is a transgenerational thing, with Edes to Jones to Edes, which is interesting.

I planned to get a doctorate in economics, but I quickly learned that the lawyers would not let the economists talk, or at least, if they let them talk, they would not listen to them, so I returned to law school at the University of Wisconsin, which I chose because of its great reputation in the field of labor law. Upon graduation and admission to the bar, I returned to Federal service in the U.S. Department of Labor, where I spent most of my career.

The bulk of that time was spent in the Division of Legislation and General Legal Services, where this committee and its counterpart in the other chamber were the focal points of our professional efforts.

During the course of my 13 years or so of service with Labor, I rose from junior level attorney through the ranks to chief lawyer for the Division of Labor Relations and Civil Rights, which was the post I held when the University of Wisconsin convinced me that legal education was also a noble calling.

I recount this part of my history for several reasons. First, I am proud to have been a career civil servant who rose through the ranks from GS–7 to GS–16. My own experience is proof to me that the merit system can and does work.

Second, I experienced a multiplicity of roles from beginning employee, to supervisor, to chief of the shop with authority, for all practical purposes, to hire and fire, and with the responsibility for

getting the work done properly and on time. This experience has given me a lasting respect for the career Federal service. In fact, I am an unabashed recruiter of young people to consider joining it, and with a fair degree of success, except when you have freezes. This experience also gave me an appreciation for the necessity of a strong merit system to insure high quality careerists.

During my career as a full-time Federal employee, I participated in a number of substantive programs which I believe are relevant to the part-time service for which I am now being considered.

First of all, the development of programs, both legislative and administrative, was a major part of the business of my division in the Solicitor's Office. You have already preempted my line; I am proud to point out that this committee shares the judgment that they do quality work in the Solicitor of Labor's Office, as represented by members of this staff over the past 10 years.

In the early sixties, I was principal codraftsman of Executive Order 10988, which established the labor management relationship in Federal Government. I also worked on the development of the standards, codes, and other procedures for that program.

During its earlier years, such legal services as the neutral role of the Secretary of Labor required were provided by our office. By the late sixties, that program was being revised, and my office had direct responsibility for legal services necessary for the revision. We continued to provide those services for the new Executive order which was ultimately issued by President Nixon and which established programs which remained in place until passage of the Civil Service Reform Act of 1978.

Additionally, as the Department of Labor in its own labor relationships needed legal services, such services were provided from the Division of Civil Rights and Labor Relations.

Sensitivity to the needs of Federal agencies as management, as well as to the integrity of the merit system, were vital in providing services to the emerging Federal labor relations program.

Now, the other major area of substantive experience during my Department of Labor tour most pertinent to the business of the Special Panel was equal employment opportunity. In 1961, I was principal codraftsman of the first set of rules and regulations for the President's Committee under Executive Order 10925, issued by the late President Kennedy.

During the period from 1962 to 1964, prior to the enactment of the Civil Rights Act, I was primarily responsible for the Department of Labor's legislative activities in the equal employment area, and appeared several times as the working counsel for the Secretary of Labor in connection with that legislation.

My last 2 years in the Department of Labor were spent as Associate Solicitor for Civil Rights and Labor Relations, which by the late sixties had administrative responsibilities for ongoing programs in the Department.

Now I am a professor of law, as well as a professor in our graduate program in industrial relations, in which I served as director for a period of 2 years. I teach labor relations law, equal employment law, and arbitration, and in the past, I have taught human resources courses and administrative law.

The University of Wisconsin, like all major universities, emphasizes and requires for tenure, scholarship, teaching, and public service. Wisconsin, like all great universities, gives more than lip service to its encouragement of public service. It is expected that senior professors will be involved in their fields in more than research and classroom settings. Thus, service as Chairman of the Special Panel will be in keeping with a long Wisconsin tradition of public service to the State as well as to the Federal Government.

Since I have been in Madison, I served for 7 years on the Governor's Manpower Planning Council, and I spent 4 years on the Madison Police and Fire Commission, the last 1½ years as its president. The Madison Police and Fire Commission has some functions for sworn personnel not unlike those of the Merit Systems Protection Board. In fact, it really is a small Civil Service Commission for just the armed troops and fire personnel.

I have served periodically as a consultant to the Department of Labor, as a consultant to the White House Task Force on Civil Rights Reorganization and on an advisory committee to the National Bar Association for continuing legal education in EEO matters. I serve in a capacity with the Federal Bar Association for continuing education in the labor law field. I am a member of the United Auto Workers Public Review Board, an adjudicatory body for internal union disputes, and I currently sit as a member of the Federal Service Impasses Panel, also established by the Civil Service Reform Act of 1978. I am a sometimes arbitrator and an active member of a number of professional organizations.

This sketch of my history and background, I hope, gives some indication that my past and current activities provide experience which I believe would be pertinent to service as Chairman of the Special Panel.

It seems to me that the Panel is a unique administrative body in the annals of government. Consequently, none of us has experience which would be perfect for the job. My past has included some endeavors which were without perfect models, so innovation is not new to me.

I am attracted to the post because it provides another opportunity for service to the Federal Government while continuing to perform service to the academic community. Legal education desperately needs increased participation from nonwhite minorities. There are no more than 400 of us in a universe of 8,000. Increasingly, our ranks are diminished by the lure of Federal service on a full-time basis. I, too, am attracted by the lure of Federal service.

However, by serving in part-time capacities, I am able to fulfill a multiplicity of roles. If confirmed as Chairman, I would be a sympathetic and sensitive neutral for those few instances in which the EEOC and MSPD do not agree. It would also provide an opportunity to me for personal growth as I participate on this unique Panel. Moreover, the experience gained from participation can be synthesized and added to my teaching so that future professionals in this field can be more adequately prepared.

I do not lack for things to occupy my time, but I welcome this new opportunity to serve.

You already have an extensive curriculum vitae, which you have referred to. If anyone is interested in more, it is there. I would be happy to answer any questions you may have.

I thank you for your attention.

The CHAIRMAN. Thank you, Professor Jones.

[The prepared statement of Professor Jones and the insertions referred to by the chairman follow:]

READEX FICHE

Statement of

James E. Jones Jr.

Professor University of Wisconsin Law School

Madison, Wisconsin

Before the

Committee on Labor and Human Resources

August 1, 1980

Mr. Chairman and Members of the Committee.

I am grateful for this opportunity to appear before you today as the nominee for Chairman of the Special Panel created by the Civil Service Reform Act of 1978. I am especially pleased by your willingness to consider this matter at a time when there are so many other critical issues competing for your time and attention. To be sure I understand that having created this unique forum to assist in the resolution of EEO matters of concern to two major federal agencies — the Merit Systems Protection Board and the Equal Employment Opportunity Commission -- you would be eager to see the Special Panel in place and ready for such business as may come before it.

I am privileged to be offered this opportunity for future public service, and if confirmed, I will endeavor to serve to the best of my ability.

As you know, I come to you from the great State of Wisconsin, but I am one of her adopted sons. I was born in Little Rock, Arkansas and educated in the public schools of Arkansas, Missouri, Michigan, Illinois and Wisconsin. World War II interrupted my college training almost before it got started and I spent three and one-half years in the United States Navy. I returned to Missouri in 1947, did college in three years, one and one-half years of graduate school at the University of Illinois, and with a brand new Master of Arts degree in Industrial Relations in hand, I went to work for the United States government in the Wage Stabilization program in Chicago, Illinois. I had planned to get a Ph.D. in Labor Economics, but quickly found out that the lawyers wouldn't let the economists talk, or at least they wouldn't listen to them, so I returned to law school at the University of Wisconsin in 1953, being attracted to that institution because of its towering reputation in the field of labor law. After graduation in 1956, and admission to the Bar, I was employed as an attorney in the United States Department of Labor, the Office of the Solicitor.

The bulk of my professional career was spent in the Division of Legislation and General Legal Services of the Solicitor's office where this Committee and its counterpart in the House were the focal points of our professional efforts. During the course of the 13 or so years of my service with the Department of Labor, I rose from a

67-234 O - 86 - 2

junior level attorney through the ranks to chief lawyer for the Division of Labor Relations and Civil Rights, the post I held when the University of Wisconsin convinced me that legal education was also a noble calling.

I recount this part of my history for several reasons. First, I am proud to have been a career civil servant who rose through the ranks from GS-7 to GS-16. My own experience is proof to me that the merit system can and does work. Secondly, I experienced a multiplicity of roles from beginning employee, to supervisor, to chief of the shop with authority, for all practical purposes, to hire and fire, and with the responsibility for getting the work done properly and on time. This experience has given me a lasting respect for the career federal service. I am an unabashed recruiter of young people to consider joining it. This experience also gave me an appreciation for the necessity of a strong merit system to ensure high quality careerists.

During my career as a full-time federal employee, I participated in a number of substantive programs which I believe are relevant to the part-time service for which I am now being considered.

First of all, the development of programs, both legislative and administrative, was a major part of the business of my division in the Solicitor's office. I am proud to point out that this Committee's staff choices over the past 10 years suggest that you share the judgment that service in the Department of Labor's legal office is quality experience.

In the early 1960's I was principal co-draftsman of Executive Order 10988 which established the labor management relationship in federal government. I also worked on the development of the standards, codes and other procedures for that program. During its early years such legal services as the neutral role of the Secretary of Labor required were provided by our office. In the late 1960's as that program was being revised my office had direct responsibility for legal services necessary for the revision. We continued to provide legal services for the new Executive Order which was ultimately issued by President Nixon and which established programs which remained in place until passage of the Civil Service Reform Act of 1978. Additionally as the Department of Labor in its own labor relationships needed legal services, such services were provided from the Division of Civil Rights and Labor Relations. Sensitivity to the needs of federal agencies as management as well as to the integrity of the merit system were vital in providing services to the emerging federal labor relations program.

The other major area of substantive experience during my Department of Labor tour most pertinent to the business of the Special Panel was equal employment opportunity. In 1961 I was the principal draftsman of the first set of rules and regulations for the President's Committee under Executive Order 10925, issued by the late President Kennedy. During the period from 1962 through 1964, prior to enactment of the Civil Rights Act of 1964, I was primarily responsible for the Department of Labor's legislative activities in the equal employment area and appeared several times as the working counsel for the Secretary of Labor in connection

with equal employment opportunity legislation. My last two years in the Department of Labor were spent as Associate Solicitor for Civil Rights and Labor Relations, which by the late 1960's had administrative responsibilities for ongoing programs in the Department.

I am a professor of law as well as a professor in our graduate program in industrial relations, in which I served as director for a period of two years. I teach labor relations law, equal employment law, and arbitration, and in the past have taught in human resources courses and administrative law. The University of Wisconsin, like all major universities, emphasizes and requires for tenure, scholarship, teaching and public service. Wisconsin, like all great universities, gives more than lip service to its encouragement of public service. It is expected that senior professors will be involved in their fields in more than research and classroom settings. Thus, service as Chairman of the Special Panel will be in keeping with a long Wisconsin tradition of public service to State as well as to the federal government.

Since I have been in Madison, I served for seven years on the Governor's Manpower Planning Council. I spent four years on the Madison Police and Fire Commission, the last year and a half as its president. The Madison Police and Fire Commission has some functions for sworn personnel not unlike those of the Merit Systems Protection Board. I have served periodically as a consultant to the Department of Labor, as a consultant to the White House Task Force on Civil Rights Reorganization and on an advisory committee to the National Bar Association for continuing legal education in the equal employmet opportunity area.

I also serve in a capacity with the Federal Bar Association for continuing education in the labor law field. I am a member of the United Auto Workers Public Review Board, an adjudicatory body for internal union disputes and currently sit as a member of the Federal Service Impasses Panel, also established by the Civil Service Reform Act of 1978. I am a sometimes arbitrator, and am active in a number of professional organizations.

I offer this sketch of my history and background as some indication that my past and current activities provide experience which I believe would be pertinent to service as Chairman of the Special Panel. It seems to me that the Panel is a unique administrative body in the annals of government. Consequently, none of us has experience which would be perfect for the job. My past has included some endeavors which were without perfect models, so innovation is not new to me.

I am attracted to the post because it provides another opportunity for service to the federal government while continuing to perform service to the academic community. Legal education desperately needs increased participation from non-white minorities as there are less than 400 of us in a universe of over 8,000. Increasingly our ranks are diminished by the lure of federal service on a full-time basis. I too am attracted by the lure of federal service.

However, by serving in part-time capacities, I am able to fulfill a multiplicity of roles. If confirmed as Chairman of this Special Panel, I could be a sympathetic and sensitive neutral for those few instances in which the EBOC and MSPB do not agree. It would also provide an opportunity to me for personal growth as I participate on this unique panel. Moreover, the experience gained from participation can be synthesized and added to my teaching so that future professionals in this field can be more adequately prepared.

Although I do not lack currently for things to occupy my time, I welcome this new opportunity to serve.

For those of you who might wish to have more complete information about my background, I have submitted copies of an up-to-date curriculum vitae to the Committee. I would be happy to answer any questions you may have. And I thank you for your kind attention.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: JONES (LAST) JAMES (FIRST) E. JR. (MIDDLE)

Position to which nominated: Chairman - Special Panel Date of nomination:

Date of birth: 4 (DAY) 6 (MONTH) 24 (YEAR) Place of birth: Little Rock, Arkansas

Marital status: Married Full name of spouse:

Name and ages of children: Evan (Miss) 16
Peter 14

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Lincoln University, Missouri	1942, 1947-50	B.A.	1950
University of Illinois	1950-51	M.A.	1951
(Institute of Labor and Industrial Relations)			
University of Wisconsin School of Law	1953-56	J.D.	1956

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Outstanding Law Alumni Award, 1977

Order of the Coif (honorary), 1970

Lincoln University Alumni Achievement Award, 1967

Participant, 30th American Assembly "On Challenges to Collective Bargaining," Columbia University, 1966

Secretary of Labor Career Service Award, 1963

John Hay Whitney Fellow, University of Wisconsin, 1953,1954

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
The Labor Law Group Trust	Chairman, Editorial Policy Committee	1978
Industrial Relations Research Association, Washington, D.C.	Treasurer, National Executive Board	1968-1969 1977-1980
~~Chairman, Editorial Committee, The Labor Law Group~~		~~1977 to present~~
Federal Bar Association	Chairman, Labor Law Committee	1967-1967
Bar of the U.S. Supreme Court		
Member State Bar of Wisconsin		
National Bar Association, NAACP, Urban League		

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

A. Industrial Relations Analyst, U.S. Wage Stabilization Board, Region 7, 1951-1953;

B. Legislative Attorney, U.S. Department of Labor, 1953-1963*

C. Counsel for Labor Relations, U.S. Department of Labor, 1963-1966;

D. Director, Office of Labor Management Policy Development, 1966-1967 (U.S. Department of Labor);

E. Associate Solicitor of Labor, Division of Labor Relations and Civil Rights, 1967-1969 (U.S.Department of Labor)

F. Professor of Law and Industrial Relations, University of Wisconsin September 1969 to date; Director, Industrial Relations Research Institute, September 1971-1973; Staff member, Institute for Research on Poverty, September 1970 to date;

G. Director, Center for Equal Employment and Affirmative Action, Industrial Relations Research Institute, University of Wisconsin Madison, July 1974 to date;

*For brief period during 1958, Research and Education Staff, Pulp, Sulphite and Paper Mill Workers, AFL-CIO.

Military Service: World War II, U.S. Navy (1943-1946)

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

See attachment entitled "Public Service"

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See attachment entitled "Publications"

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

1. 1974: Salter for Mayor $25, Gibson for Judge, $15, Bowen for Mayor $15
2. 1975: Soglin for Mayor $25, Eich for Judge $10, Smith for Alderman $5
3. 1976: Doyle for D.A. $10, Democratic Party $25, Wisconsin Democratic Party $60
4. 1977: Democratic National Committee $50, Salter for Mayor $25
5. 1978: Abrahamson for Judge $25
6. 1979: Democratic National Committee $50

3

67-234 O - 80 - 3

Public Service

Member, the Public Review Board
International Union, UAW (1970 to present)
Consultant, U.S. Department of Labor
Office of Contract Compliance (1969-1971, 1977-1978)
Advisory Committee, National Research Council
National Academy of Sciences (1971-1973)
Wisconsin Manpower Planning Council (1971-1976)
Commissioner, Madison Police and Fire Commission (1973-1977)
President (May 1976-May 1977)
Consultant, District of Columbia, Board of Higher Education,
Labor Relations Policy (1974-1975)
Special Committee on Criminal Justice, Standards and Goals,
Wisconsin Council on Criminal Justice (1975-1976)
National Advisory Board of the IR Law Journal (1975 to present)
National Advisory Committee of the National Bar Association's
Equal Employment Clinical Project (April 1976 - 1978)
Board of Directors, Labor Law Section, Wisconsin State Bar (1976-1978)
Advisory Board of the Employment Relations Studies Division of the
Wisconsin Center for Public Policy (1976)
Federal Mediation and Conciliation Arbitration Panel (1975 to present)
Special Arbitrator, U.S. Steel and United Steel Workers (1976 to present)
Arbitrator, Mid-West Regional Panel, U.S. Postal Service, (1978 -)
Arbitration Panel, East Allen County School Corporation Association of
Organized Employees (1976 to present)
Consultant, President's Reorganization Task Force on Civil Rights
(1977-1978)
Member, Federal Service Impasses Panel (February 24, 1978 to present)
Deputy Chairman, Council on Labor Law and Labor Relations, of the
Federal Bar Association, 1978 to present
Member, Expert Committee on Family Budget Revisions (U.S. Dept. of
Labor BLS Series), 1979

Publications

Articles

"The National Emergency Disputes Provisions of the Taft-Hartley Act: A View from a Legislative Draftsman's Desk," 17 Western Reserve Law Review 133-256 (1965); reprinted in Federal Legislation to End Strikes: A Documentary History, Part 2, pp. 887-1010, Committee on Labor and Public Welfare, U.S. Senate, prepared by Library of Congress, May 1967.

"Practices and Procedures Under Executive Order 11246--New Developments," Equal Employment Opportunity: Compliance and Affirmative Action, Thompson Powers, Editor; published by BNA and Plans for Progress, 1969.

"The Role of Law in Improving Minority Group Employment Opportunities: Racial Discrimination in Employment and in Labor Unions," 16th Annual Institute on Labor Law, October 30-31, 1969. The Southwestern Legal Foundation, Dallas, Texas.

"Federal Contract Compliance in Phase II--The Dawning of the Age of Enforcement," paper delivered at the Sixth Annual Labor Relations Institute, April 23, 1970, 4 Georgia Law Review 756.

"To Rouse a Slumbering Giant--Government Contracting and Equal Employment Initiatives for the 1970's," Southwestern Legal Foundation, 17th Annual Institute on Labor, October 16-17, 1970.

"The Bugaboo of Employment Quotas," 1970 Wisconsin Law Review 341.

"Toward a Definition of 'National Emergency Dispute'," 1971 Wisconsin Law Review, No. 3.

"Disestablishment of Labor Unions for Engaging in Racial Discrimination: A New Use for an Old Remedy," 1972 Wisconsin Law Review, No. 2.

"Equal Employment Laws as Instruments of Social Change," American Government and Politics, Stephen L. Wasby, Editor, Charles Scribner's Sons, N.Y., 1973.

"Employment Discrimination, Minority Faculty and the Predominantly White Law School-- Some Observations," Black Law Journal, Vol. 4, No. 3 (1974-1975), p. 488.

"The Transformation of Fair Employment Practices Policies," in Federal Policies and Workers Status Since The 30's, Chapter 7, Page 159, IRRA Research Association Series, 1976 (Joseph Goldberg et al., Editors).

"The Development of Modern EEO AA Law: An Historical Overview," 20 Howard Law Journal, page 75, 1976.

"The Development of the Law Under Title VII Since 1965: Implications of the New Law," 30 Rutgers Law Review, No. 1, Page 1, Fall 1976.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

No

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

Not applicable

3. Has a commitment been made to you for employment after you leave Federal service?

Not applicable

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

(1) Arbitrater for the Postal Service and postal unions
(Mid-west Regional Panel)

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

Resign from arbitration panel

1979

JAMES E. JONES, JR.

CURRICULUM VITAE

1. Name, Date and Place of Birth

James Edward Jones, Jr.
Born - June 4, 1924, Little Rock, Arkansas

2. Education

B.A., 1950, Lincoln University, Missouri
M.A., 1951, University of Illinois
(Institute of Labor and Industrial Relations)
J.D., 1956, University of Wisconsin, School of Law

3. Positions Held

A. Industrial Relations Analyst, U.S. Wage Stabilization Board, Region 7, 1951-1953;

B. Legislative Attorney, U.S. Department of Labor, 1956-1963;*

C. Counsel for Labor Relations, U.S. Department of Labor, 1963-1966;

D. Director, Office of Labor Management Policy Development, 1966-1967 (U.S. Department of Labor);

E. Associate Solicitor of Labor, Division of Labor Relations and Civil Rights, 1967-1969 (U.S. Department of Labor);

F. Professor of Law and Industrial Relations, University of Wisconsin, September 1969 to date; Director, Industrial Relations Research Institute, September 1971-1973; Staff member, Institute for Research on Poverty, September 1970 to date;

G. Director, Center for Equal Employment and Affirmative Action, Industrial Relations Research Institute, University of Wisconsin, Madison, July 1974 to date.

4. Special Honors or Awards

Outstanding Law Alumni Award, 1977
Order of the Coif (honorary), 1970
Lincoln University Alumni Achievement Award, 1967
Participant, 30th American Assembly "On Challenges to Collegtive Bargaining," Columbia University, 1966
Secretary of Labor Career Service Award, 1963
John Hay Whitney Fellow, University of Wisconsin, 1953, 1954

*For brief period during 1958, Research and Education Staff, Pulp, Sulphite and Paper Mill Workers, AFL-CIO.

5. Professional Associations

The Labor Law Group Trust, Chairman, Editorial Policy Committee (1978-)
Industrial Relations Research Association, Treasurer, Washington, D.C. Chapter (1968-1969)
Member, Federal Service Impasses Panel, Appointed by the President (February 24, 1978)
Executive Board, Industrial Relations Research Association (December 1977 to 1980)
Chairman, Editorial Committee, The Labor Law Group (December 1977 to present)
Federal Bar Association, Chairman, Labor Law Committee (1967-1969)
Bar of the U.S. Supreme Court
Member State Bar of Wisconsin
National Bar Association

6. Military Service

W.W. II Vet., U.S. Navy (1943-1946)

7. Public Service

Member, the Public Review Board International Union, UAW (1970 to present)
Consultant, U.S. Department of Labor Office of Contract Compliance (1969-1971, 1977-1978)
Advisory Committee, National Research Council National Academy of Sciences (1971-1973)
Wisconsin Manpower Planning Council (1971-1976)
Commissioner, Madison Police and Fire Commission (1973-1977) President (May 1976-May 1977)
Consultant, District of Columbia, Board of Higher Education, Labor Relations Policy (1974-1975)
Special Committee on Criminal Justice, Standards and Goals, Wisconsin Council on Criminal Justice (1975-1976)
National Advisory Board of the IR Law Journal (1975 to present)
National Advisory Committee of the National Bar Association's Equal Employment Clinical Project (April 1976 - 1978)
Board of Directors, Labor Law Section, Wisconsin State Bar (1976-1978)
Advisory Board of the Employment Relations Studies Division of the Wisconsin Center for Public Policy (1976)
Federal Mediation and Conciliation Arbitration Panel (1975 to present)
Special Arbitrator, U.S. Steel and United Steel Workers (1976 to present)
Arbitrator, Mid-West Regional Panel, U.S. Postal Service, (1978 -)
Arbitration Panel, East Allen County School Corporation Association of Organized Employees (1976 to present)
Consultant, President's Reorganization Task Force on Civil Rights (1977-1978)
Member, Federal Service Impasses Panel (February 24, 1978 to present)
Deputy Chairman, Council on Labor Law and Labor Relations, of the Federal Bar Association, 1978 to present
Member, Expert Committee on Family Budget Revisions (U.S. Dept. of Labor BLS Series), 1979.

8. Publications

Articles

"The National Emergency Disputes Provisions of the Taft-Hartley Act: A View from a Legislative Draftsman's Desk," 17 Western Reserve Law Review 133-296 (1965); reprinted in Federal Legislation to End Strikes: A Documentary History, Part 2, pp. 807-1010, Committee on Labor and Public Welfare, U.S. Senate, prepared by Library of Congress, May 1967.

"Practices and Procedures Under Executive Order 11246--New Developments," Equal Employment Opportunity: Compliance and Affirmative Action, Thompson Powers, Editor; published by NAM and Plans for Progress, 1969.

"The Role of Law in Improving Minority Group Employment Opportunities: Racial Discrimination in Employment and in Labor Unions," 16th Annual Institute on Labor Law, October 30-31, 1969. The Southwestern Legal Foundation, Dallas, Texas.

"Federal Contract Compliance in Phase II--The Dawning of the Age of Enforcement," paper delivered at the Sixth Annual Labor Relations Institute, April 23, 1970, 4 Georgia Law Review 756.

"To Rouse a Slumbering Giant--Government Contracting and Equal Employment Initiatives for the 1970's," Southwestern Legal Foundation, 17th Annual Institute on Labor, October 16-17, 1970.

"The Bugaboo of Employment Quotas," 1970 Wisconsin Law Review 341.

"Toward a Definition of 'National Emergency Dispute'," 1971 Wisconsin Law Review, No. 1.

"Disestablishment of Labor Unions for Engaging in Racial Discrimination: A New Use for an Old Remedy," 1972 Wisconsin Law Review, No. 2.

"Equal Employment Laws as Instruments of Social Change," American Government and Politics, Stephen L. Wasby, Editor, Charles Scribner's Sons, N.Y., 1973.

"Employment Discrimination, Minority Faculty and the Predominantly White Law School-- Some Observations," Black Law Journal, Vol. 4, No. 3 (1974-1975), p. 488.

"The Transformation of Fair Employment Practices Policies," in Federal Policies and Workers Status Since The 30's, Chapter 7, Page 159, IRRA Research Association Series, 1976 (Joseph Goldberg et al., Editors).

"The Development of Modern EEO AA Law: An Historical Overview," 30 Howard Law Journal, page 73, 1976.

"The Development of the Law Under Title VII Since 1965: Implications of the New Law," 30 Rutgers Law Review, No. 1, Page 1, Fall 1976.

8. Publications (Cont4)

Articles

"Title VII, Seniority, and the Supreme Court: Clarification or Retreat?" 26 Kansas Law Review No. 1, Page 1 (1977).

Chapter 2, "The Origins of the Concept of the Duty of Fair Representation," in The Duty of Fair Representation, Prof. Jean T. McKelvey, Editor, Cornell University Press, 1977.

"Equal Employment Law in the 21st Century," Volume 39 Ohio State Law Journal, p. 700 (1978).

"The Implications of the Bakke Decision for the Future of Affirmative Action -- Forward to the Purified Republic or Retreat to Benign Neglect?" Ivy Leaf Magazine, Fall 1978.

"Equal Employment and Affirmative Action: Bakke and Beyond," State of Black America, 1979, J.D. Williams, editor, published by the National Urban League, January 17, 1979.

Miscellaneous Publications

Co-Editor with Professor A.W. Blumrosen, et al., 2 vol. training manual for EEOC "Foundations of Equal Opportunity."

"Affirmative Action as Viewed by Academic Humanists, From the Viewpoint of Law," Academic Humanists Speak to Issues in Affirmative Action, Dale Miller, Editor, Drake University, February 1975.

Conference paper on "Cost Sharing in Gaining Equal Employment Opportunity," Monthly Labor Review, p. 39, May 1976.

Comments on papers in "A Symposium in Evaluating the Impact of Affirmative Action: A Look at the Federal Contract Compliance Program," Industrial Relations Review, Vol. 29, No. 4, Page 581, July 1976.

Comments on "Arbitration, The Constitution and Personal Freedom," Proceedings of the 29th Annual Meeting of the National Academy of Arbitrators, page 85, 1976.

"Potential for Planned Experimentation in the DOL Regulatory Area," with Stanley Masters and others. The final report on the experimentation project was filed October 30, 1978. (Note: Stanley Masters and David Zimmerman were probably the principal authors of this report. My input was principally in the design of the proposed experiments.)

Textbook:

"Employment Discrimination," Unit Three of Labor Relations and Social Problems: A Course Book-1st 2nd and 3rd Editions (with Robert N. Covington, et al.) for the Labor Law Group. Fourth Edition, 1979 (with Julius Getman and William Murphy).

8. Publications (Contd)

Conferences, Workshops, and Miscellaneous

Speech to the minority groups section of the AALS, Houston, Texas "Minority Law School Admissions: A Prospectus for the Future" (unpublished paper) December 27, 1976

Southwestern Legal Foundation Short Course on Labor, "Workshop on the Federal Executive Program," Dallas, Texas March 15, 1977

Vanderbilt University Law School, EEO Clinc Conducted sessions on current developments in the Supreme Court and remedies April 2, 1977

EEO Workshop for the staff of the Wisconsin Council on Criminal Justice May 10, 1977

Consulted with the Office of Federal Contract Compliance Programs on the proposed revision of their rules and regulations. In connection with this consultation, initiated with and organized members of the Civil Rights Leadership Conference for participation in the administrative process leading up to changes in the rules. Representatives of the NAACP legal Defense and Education, Inc., Mexican-American Legal Defense Education, Inc., and the Howard University Equal Employment Law Clinic participated in this process. August 31, 1976.

Consulted with the staff of the Equal Opportunity Oversight Subcommittee of the House Labor Committee on proposed rule changes. August 1976.

Consulted with the U.S. Commission on Civil Rights on proposed research in the equal employment field and on their proposed publication on seniority. Washington, D.C., September 27-28, 1976.

Served on the Special Admissions Committee of the AALS on the Amicus Brief to the Supreme Court in Board of Regents of California v. Bakke (brief was filed June 7, 1977) December 1976 to June 1977

"EEO Law: The Court, Affirmative Action and You," Department of Human Rights, City of Tulsa, Oklahoma June 3, 1977.

AAUP Conference, "From Berea, to Brown, to Bakke and Beyond," (unpublished paper) Madison, Wisconsin June 11, 1977.

EEO Workshop, National Bar Association, New Orleans, Louisiana August 3, 1977

EEO Workshop, National Bar Association, St. Louis, Missouri August 26, 1977.

National Association of Affirmative Action Officers, "The Foundations of Affirmative Action--The Emergence and Development of the Modern Concept," (unpublished paper) Washington, D.C. September 16, 1977.

"Title VII--The Civil Rights Act Paying for Itself" "Title VII and the Supreme Court--1976" Minnesota Continuing Education, St. Paul, Minnesota October 14, 1977

Conferences, Workshops, and Miscellaneous (Contd)

Wisconsin Issues Forum on WHA Radio, "Affirmative Action and Reverse Discrimination" Madison, Wisconsin October 16, 1977

UW Extension Division of Economic and Environmental Development Workshop, "Focus on Affirmative Action" Madison, Wisconsin December 20, 1977

Edison Electric Institute, "Equal Employment in the Supreme Court-- Reflections Upon a Decade of Developing Law" (unpublished paper) Tampa, Florida January 26, 1978

Southwestern Legal Foundation Short Course on Labor "The Federal Executive Order Program" (workshop) Dallas, Texas March 14, 1978.

Title VII Paying for Itself, Number 4--"Equal Employment and Affirmative Action at the Crossroads," (fourth annual conference held at the Wisconsin Center with CLEW) Madison, Wisconsin April 27-28, 1978.

Title VII - Civil Rights Paying for Itself (IV) April 27-28, 1978 (CLEW) Conference Chair and lecturer - Madison.

Employment Law Update - Speaker, Pepperdine University Law School, May 16, 1978 (unpublished paper) Los Angeles, CA.

EEO and Affirmative Action Workshop - WCCJ, June 15-16, 1978 (sole instructor - two day training session) Madison, Wisconsin

Federal Bar Association - BNA - National Conference on EEO and Collective Bargaining - June 9-10, 1978 (Seniority and Affirmative Action in the aftermath of Bakke (unpublished paper) Washington, D.C.

Chair, Contributed Papers: Civil Rights and EEO, IRRA meeting August 31, 1978, Chicago, Illinois.

Moderator, "Affirmative Action in Employment -- Where do we go From Here?" - FBA/BNA Briefing Conferences, October 26, 1978 Chicago, IL.

Speaker, "EEO and Affirmative Action in the Post Bakke Period" (unpublished paper) - National Conference Sponsored by Howard University Law School, NAACP Legal Defense Fund, The National Urban League and the National Urban Coalition - October 27, 1978, Washington, D.C.

Speaker, Annual Dinner Meeting of the Milwaukee Commission on Community Retentions, November 1, 1978.

Faculty, Southwestern Legal Foundation Short Course on Employment Discrimination and Labor Arbitration, March 6, 1979, Dallas, Texas

Speaker, Catholic University Law School, The Implications of Weber v. Kaiser Aluminum, March 29, 1979, Washington, D.C.

James E. Jones, Jr.
Professor of Law and Industrial Relations
The University of Wisconsin

Madison Campus Activities

Human Rights Committee--1969-1972
Law School Library Committee--1969-1971
Law School Tenure Committee--1971-1973
Retentions Committee--1974 to present
Afro Studies Department Steering Committee--1970-1972
Afro Studies Department Executive Committee--September 1973 to present
Industrial Relations Research Institute Committees--
Executive Committee--1971 to present (Chairman during 1971-1973)
Admissions Committee--1969-1971
Curriculum Committee--Fall 1973-1975
Center for the Studies of Unions and Collective Bargaining--1970-1973
Manpower and Training Research Unit--1972 to present
Center for Comparative and International Labor Studies--1971-1973
University Senate--September 1972-1976
Regents Ad Hoc Committee on Minority and Disadvantaged Students--
January 1972-June 1972
Athletic Board--1972 to present
LEO Ad Hoc Policy Committee--1973-1975
Advanced Opportunity Fellowship Committee (Chairman)--1972-1973
Faculty Supervisor of Clinical Legal Education Intern Program in:
(1) Equal Employment Law Project, Department of Industry, Labor and Human Relations (Madison), 1970-1973
(2) NLRB Regional Office (Milwaukee), 1974-1976
(3) Wisconsin Employment Relations Commission (Madison), 1974-1976

Miscellaneous Activities

Chairman, IRRA Panel on "New Goals and Strategies of American Labor Unions," 22nd Annual Winter Meeting
Industrial Relations Research Association, New York
December 1969

Address, Freedom Fund Dinner
Madison, NAACP
May 1970

Chairman, Panel on Problems and Prospects of a Coordinated Working Relationship, Conference on "Vocational Education and Training Under a Comprehensive Manpower Policy"
May 13-14, 1970

Speaker, Lawyers' Committee for Civil Rights Under Law and The National Urban Coalition Conference on "Equal Employment in the Construction Industry"
July 1970

Lecturer, Southern Illinois University
Department of Government, Distinguished Lecturer Series
November 10-11, 1970

Address, Mid-Winter Labor Law Seminar
Minnesota State Bar Association
February 1971

Lecturer (training consultant), Department of Industry,
Labor and Human Relations, State of Wisconsin
Equal Rights Division, Milwaukee, Wisconsin
April 13, 1971

Participant, "The Advocates"
National Educational Television Program
June 29, 1971

Address, NAACP 62nd Annual Convention
Minneapolis, Minnesota
July 1971

Southern Newspaper Foundation Association, Vanderbilt University
Conference on "Trends in Race Relations"--July 31-August 3, 1972
Unpublished Paper--"Of Shadows and Substance--Reflections on
Equal Employment," 1970-1972

Speaker, Urban Manpower Conference, "Equal Opportunity Job Barriers,"
Milwaukee, Wisconsin
October 1972

Instructor, Training Conference for International Association of
Official Human Rights Agencies, Newark, N.J., Denver, 1972
(Co-Editor with Professor A. W. Blumrosen, et al.,
2-volume training manual for EEOC "Foundations of Equal Opportunity")

Panelist, Seventh Annual Governor's Conference on Affirmative
Action, Milwaukee, Wisconsin, 1973

Speaker, University of Chicago, Midwest Conference on Industrial
Relations, October 1973
Unpublished Paper--"Current Status of Security Under Title VII"

Speaker and Conference Chairman, Wingspread Conference on Equal
Employment and Affirmative Action, The Johnson Foundation,
Racine, Wisconsin
October 1974

Conference Chairman and Co-Sponsor, "Title VII: Civil Rights Paying
for Itself," Wisconsin Center, University of Wisconsin-Madison
November 1, 1974

Speaker, American Association of Law Schools Section on Minority Groups, San Francisco, California
December 27-30, 1974

Speaker, Governor's Conference on Understanding Affirmative Action
Drake University, Des Moines, Iowa
February 1975

Discussant, Conference on "Evaluating the Effects of the Federal Contract Compliance Program"
Cornell University, Ithaca, N.Y.
May 8-9, 1975
Paper published in July, 1976 Industrial Relations Review

Speaker, "Resolving the Conflicts Between Affirmative Action and the Seniority System," Seventh Annual Recruitment and Training Program Conference, Washington, D.C.
June 5-6, 1975

Participant, workshop (with Herbert Hill) at the 66th Annual Convention of the NAACP, Washington, D.C.
June 30-July 4, 1975
Unpublished Paper--"Seniority and the Recently Hired and Governmentally Twice Emancipated--Freedom Now or Once Again to the Foot of the Line?"

Conference Chairman and Co-Sponsor, "Title VII: Civil Rights Paying for Itself, Part 2," Wisconsin Center, University of Wisconsin-Madison
October 31, 1975

Speaker, Rutgers University/EEOC Symposium on the Civil Rights Act of 1964
November 28-29, 1975
Publication Forthcoming--"The Development of the Law Under Title VII Since 1965: Implications of the New Law"

Panelist, Workshop on "The Contribution of Collective Bargaining to Equal Employment" at the 28th Annual Winter Meeting of the Industrial Relations Research Association, Dallas, Texas
December 28-30, 1975
Conference papers published in May 1976 Monthly Labor Review

IRRA Research Volume for 1975
Forthcoming Publication--"Federal Policies and Worker Status Since the Thirties--The Transformation of Fair Employment Practices Policies"

Speaker, Labor Law Section of the Wisconsin State Bar
January 29, 1976
Unpublished Paper--"Multiplicity of Laws, Multiplicity of Tribunals--Curse or a Blessing?" (Unpublished paper)

Speaker and Co-Sponsor, conference on Equal Employment and Affirmative Action in Higher Education," Wisconsin Center, UW-Madison
March 26-27, 1976
Presented paper on "History and Development of Modern Equal Employment and Affirmative Action Law and Machinery: An Overview"

Panelist, National Academy of Arbitrators, "What Price Employment? Arbitration, the Constitution, and Freedom," San Francisco, California
April 21-22, 1976
(publication to appear in 1976 Proceedings of the Academy)

Equal Employment Expert, Equal Opportunity Panel for the Caucus of Black Democrats, Charlotte, North Carolina
April 30, 1976

Speaker, Howard University School of Law, Equal Employment Law Litigation Clinic: "Bringing An Equal Employment Case: Choosing the Forum--An Overview"
May 21, 1976
(unpublished paper)

Consultant, Pennsylvania Human Relations Commission on Layoff and Recall Regulations
June 1976

Speaker, workshops for employees in various State agencies--
Manpower Personnel--April 14, 1976, Madison
Wisconsin Department of Administration--April 20, 1976, Madison
Wisconsin Council for Clinical Justice, Equal Opportunity/Affirmative Action Program--April 27, 1976, Milwaukee
School for Workers Training Program for Federal Employees--March 21, 1976, UW-Madison
Summer Outreach Program, Equal Employment and Affirmative Action--June 7, 1976, UW-Milwaukee

"Handling Equal Employment Law Cases from A-Z," National Bar Association and the Cook County Bar of Chicago, September 25-26, 1976, lecture, "Overview of the Law of Employment Discrimination"

Title VII Paying for Itself, Number 3, Wisconsin Center with CLEW and the district office of EEOC--"Recent Developments in EEO Law and the Supreme Court" (unpublished paper)
Conference Organizer and Chairman (165 registrations)
November 5, 1976

Discussant, Symposium on Equal Opportunity for the staff of five Madison hospitals
December 10, 1976

* * * * * * *

5 USC 7702.

"§ 7702. Actions involving discrimination

"(a)(1) Notwithstanding any other provision of law, and except as provided in paragraph (2) of this subsection, in the case of any employee or applicant for employment who—

"(A) has been effected by an action which the employee or applicant may appeal to the Merit Systems Protection Board, and

"(B) alleges that a basis for the action was discrimination prohibited by—

"(i) section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16c),

"(ii) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)),

"(iii) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791),

"(iv) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), or

"(v) any rule, regulation, or policy directive prescribed under any provision of law described in clauses (i) through (iv) of this subparagraph,

the Board shall, within 120 days of the filing of the appeal, decide both the issue of discrimination and the appealable action in accordance with the Board's appellate procedures under section 7701 of this title and this section.

"(2) In any matter before an agency which involves—

"(A) any action described in paragraph (1)(A) of this subsection; and

"(B) any issue of discrimination prohibited under any provision of law described in paragraph (1)(B) of this subsection;

the agency shall resolve such matter within 120 days. The decision of the agency in any such matter shall be a judicially reviewable action unless the employee appeals the matter to the Board under paragraph (1) of this subsection.

"(3) Any decision of the Board under paragraph (1) of this subsection shall be a judicially reviewable action as of—

"(A) the date of issuance of the decision if the employee or applicant does not file a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this section, or

"(B) the date the Commission determines not to consider the decision under subsection (b)(2) of this section.

"(b)(1) An employee or applicant may, within 30 days after notice of the decision of the Board under subsection (a)(1) of this section, petition the Commission to consider the decision.

"(2) The Commission shall, within 30 days after the date of the petition, determine whether to consider the decision. A determination of the Commission not to consider the decision may not be used as evidence with respect to any issue of discrimination in any judicial proceeding concerning that issue.

"(3) If the Commission makes a determination to consider the decision, the Commission shall, within 60 days after the date of the determination, consider the entire record of the proceedings of the Board and, on the basis of the evidentiary record before the Board, as supplemented under paragraph (4) of this subsection, either—

"(A) concur in the decision of the Board; or

"(B) issue in writing another decision which differs from the decision of the Board to the extent that the Commission finds that, as a matter of law—

"(i) the decision of the Board constitutes an incorrect interpretation of any provision of any law, rule, regulation, or policy directive referred to in subsection (a)(1)(B) of this section, or

"(ii) the decision involving such provision is not supported by the evidence in the record as a whole.

"(4) In considering any decision of the Board under this subsection, the Commission may refer the case to the Board, or provide on its own, for the taking (within such period as permits the Commission to make a decision within the 60-day period prescribed under this subsection) of additional evidence to the extent it considers necessary to supplement the record.

"(5)(A) If the Commission concurs pursuant to paragraph (3)(A) of this subsection in the decision of the Board, the decision of the Board shall be a judicially reviewable action.

"(B) If the Commission issues any decision under paragraph (3)(B) of this subsection, the Commission shall immediately refer the matter to the Board.

"(c) Within 30 days after receipt by the Board of the decision of the Commission under subsection (b)(5)(B) of this section, the Board shall consider the decision and—

"(1) concur and adopt in whole the decision of the Commission; or

"(2) to the extent that the Board finds that, as a matter of law, (A) the Commission decision constitutes an incorrect interpretation of any provision of any civil service law, rule, regulation or policy directive, or (B) the Commission decision involving

such provision is not supported by the evidence in the record as a whole—

"(i) reaffirm the initial decision of the Board; or

"(ii) reaffirm the initial decision of the Board with such revisions as it determines appropriate.

If the Board takes the action provided under paragraph (1), the decision of the Board shall be a judicially reviewable action.

"(d)(1) If the Board takes any action under subsection (c)(2) of this section, the matter shall be immediately certified to a special panel described in paragraph (6) of this subsection. Upon certification, the Board shall, within 5 days (excluding Saturdays, Sundays, and holidays), transmit to the special panel the administrative record in the proceeding, including—

"(A) the factual record compiled under this section,

"(B) the decisions issued by the Board and the Commission under this section, and

"(C) any transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

"(2)(A) The special panel shall, within 45 days after a matter has been certified to it, review the administrative record transmitted to it and, on the basis of the record, decide the issues in dispute and issue a final decision which shall be a judicially reviewable action.

"(B) The special panel shall give due deference to the respective expertise of the Board and Commission in making its decision.

"(3) The special panel shall refer its decision under paragraph (2) of this subsection to the Board and the Board shall order any agency to take any action appropriate to carry out the decision.

"(4) The special panel shall permit the employee or applicant who brought the complaint and the employing agency to appear before the panel to present oral arguments and to present written arguments with respect to the matter.

"(5) Upon application by the employee or applicant, the Commission may issue such interim relief as it determines appropriate to mitigate any exceptional hardship the employee or applicant might otherwise incur as a result of the certification of any matter under this subsection, except that the Commission may not stay, or order any agency to review on an interim basis, the action referred to in subsection (a)(1) of this section.

Special panel.

"(6)(A) Each time the Board takes any action under subsection (c)(2) of this section, a special panel shall be convened which shall consist of—

"(i) an individual appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 6 years as chairman of the special panel each time it is convened;

"(ii) one member of the Board designated by the Chairman of the Board each time a panel is convened; and

"(iii) one member of the Commission designated by the Chairman of the Commission each time a panel is convened.

The chairman of the special panel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office.

5 USC 5332 note.

"(B) The chairman is entitled to pay at a rate equal to the maximum annual rate of basic pay payable under the General Schedule for each day he is engaged in the performance of official business on the work of the special panel.

Administrative assistance.

"(C) The Board and the Commission shall provide such administrative assistance to the special panel as may be necessary and, to the extent practicable, shall equally divide the costs of providing the administrative assistance.

"(e)(1) Notwithstanding any other provision of law, if at any time after—

"(A) the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action under this section or an appeal under paragraph (2) of this subsection;

"(B) the 120th day following the filing of an appeal with the Board under subsection (a)(1) of this section, there is no judicially reviewable action (unless such action is not as the result of the filing of a petition by the employee under subsection (b)(1) of this section); or

"(C) the 180th day following the filing of a petition with the Equal Employment Opportunity Commission under subsection (b)(1) of this title, there is no final agency action under subsection (b), (c), or (d) of this section;

an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), or section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(d)).

"(2) If, at any time after the 120th day following the filing of any matter described in subsection (a)(2) of this section with an agency, there is no judicially reviewable action, the employee may appeal the matter to the Board under subsection (a)(1) of this section.

"(3) Nothing in this section shall be construed to affect the right to trial de novo under any provision of law described in subsection (a)(1) of this section after a judicially reviewable action, including the decision of an agency under subsection (a)(2) of this section.

"(f) In any case in which an employee is required to file any action, appeal, or petition under this section and the employee timely files the action, appeal, or petition with an agency other than the agency with which the action, appeal, or petition is to be filed, the employee shall be treated as having timely filed the action, appeal, or petition as of the date it is filed with the proper agency.

* * * * * * *

(From Conference Report on S. 2640, Civil Service Reform Act of 1978, Report 95-1717)

* * * * * * *

APPEALABLE ACTIONS IN WHICH ALLEGATION OF DISCRIMINATION HAS BEEN RAISED

Both the Senate bill and the House amendment adopt special procedures for resolving appealable actions where an allegation of discrimination is raised. The Senate bill provides that, whenever an issue of discrimination is raised in the course of a hearing before the Board, the Board must notify the EEOC and the EEOC has the right to participate fully in the proceeding. After action by the Board, the EEOC has an opportunity to review the decision and revise it. The Board may then accept the EEOC's decision, or issue a new one. Where the two agencies are unable to agree, the matter is immediately certified to the court of appeals for resolution. Before the court of appeals, the expertise of both the MSPB and the EEOC is to be given weight in their respective areas of jurisdiction. While the matter is pending in the court, the EEOC is authorized to grant interim relief to the employee.

The House amendment allows the EEOC to delegate to the MSPB authority to make a preliminary determination in an adverse action in which discrimination has been raised, but it directs the EEOC to make the final determination in such cases. The decision of the EEOC constitutes final administrative determination in the matter, and there is no further review in the courts, unless the employee decides to appeal.

The conference substitute in section 7702 adopts the Senate approach at the administrative level, with some modifications, but it places an administrative tribunal, ad hoc in nature, at the apex of the administrative process, rather than depending upon the court of appeals to resolve conflicts between the two agencies. The conference substitute maintains the principle of parity between the MSPB and the EEOC and establishes an appropriate balance in regard to the enforcement of both the merit system principles of title 5 of the United States Code and title VII of the Civil Rights Act of 1964 and other laws prohibiting discrimination. At the same time it preserves for EEOC, as proposed in Reorganization Plan No. 1 of 1978, authority for issuing general policy directives implementing title VII of the Civil Rights Act. This preserves an important policy role for EEOC which it may invoke, consistent with the requirements of law, regardless of the outcome of a particular case. The conference substitute also protects the existing rights of an employee to trial de novo under the Civil Rights Act after a final agency action or if there is no administrative decision after a specified number of days.

140

APPEALS PROCEDURE

This section applies to both employees and applicants. In all mixed cases, that is, cases involving any action that could be appealed to the MSPB and which involve an allegation of discrimination, the MSPB will hold hearings and issue a decision on both the issue of discrimination and the appealable action. The EEOC will not participate in this proceeding. The term "decision" as used throughout this section includes any remedial order the agency or panel may impose under law.

It is expected that the Board will make adequate training and resources available for the training and supervision of these appeals officers provided for in section 7702(a) to avoid the possibility of inadequate preparation for the processing of those appeals matters which involve allegations of discrimination.

The decision of the Board shall be final agency action unless the employee files a petition with the EEOC to reconsider the case. In the case of class actions, the law generally governing the right of one or more members to appeal an initial decision shall be applicable in this case as well. If the EEOC decides to reconsider the MSPB decision, it may remand the case to the Board for further hearing or provide for its own supplemental hearing as it deems necessary to supplement the record. This amends the procedures established in the Senate bill which did not allow the EEOC to take additional evidence. In making a new decision, the EEOC must determine that: (1) the MSPB decision constitutes an incorrect interpretation of any law, rule, or regulation over which the EEOC has jurisdiction; or (2) the application of such law to the evidence in the record is unsupported by such evidence as a matter of law.

If the EEOC concurs in the decision of the Board, including the remedy ordered by the MSPB, then the decision of the Board shall be final agency action in the matter. If the EEOC decision differs from the MSPB decision, then the case must be referred back to the MSPB. The MSPB may accept the EEOC decision, or if the MSPB determines that the EEOC decision (1) constitutes an incorrect interpretation of any civil service law, rule, or regulation; or (2) the application of such law to the evidence in the record is unsupported by such evidence, as a matter of law, it may reaffirm its initial decision with such revisions as it deems appropriate.

If the Board does not adopt the order of the EEOC, the matter will immediately be certified to the special three-member panel. The panel will review the entire administrative record of the proceeding, and give due deference to the expertise of each agency in reaching a decision. The employee and the agency against whom the complaint was filed may appear before the panel in person, or through an attorney or other representative. The decision of the special panel will be the final agency action in the matter.

Upon application by the employee, the EEOC may, as in the Senate bill, issue certain interim relief as it determines appropriate, to mitigate any exceptional hardship the employee might incur. The bill establishes mandatory time limits to govern the maximum length of time the employing agency, the MSPB, the EEOC, or the Panel may take

to resolve the matter at each step in the process. The act makes compliance with these deadlines mandatory—not discretionary—in order to assure the employee the right to have as expeditious a resolution of the matter as possible. The conferees fully expect the agencies to devote the resources and planning necessary to assure compliance with these statutory deadlines. The bill imposes a statutory requirement that the delays that have been experienced in the past in processing discrimination complaints will be eliminated. Where an agency has not completed action by the time required by this statute it shall immediately take all necessary steps to rapidly complete action on the matter.

It is not intended that the employing agencies, the Board, the Commission, or the special panel would automatically lose jurisdiction for failing to meet these time frames. Congress will exercise its oversight responsibilities should there be a systematic pattern of any body failing to meet these time frames.

* * * * * * *

The CHAIRMAN. To read your record of activities, it is very impressive indeed, and it certainly does not leave you any time for what I would consider light-hearted and frivolous activities. But if you ever did get a little time off, what would you do?

Professor JONES. Well, I would try to work on my lousy tennis game, which has been lousy for 20 years, and I hope to do a little of that in about 11 days. And I started my morning with a 3-mile jog, so I at least get my pores open, and a little quiet time to think. And, I would learn to sail a boat, which I thought I was going to do, since we have a beautiful lake, and in 11 years, I have not been out on the lake. But these are some things that I think one could do.

Fortunately for me, I do get enjoyment out of working with young people; it is really a "trip", as they say. I get a charge from that involvement. And I take credit for all they do that is good, and when they blow it, it is their fault. But I do enjoy the work. The substance that we are all concerned with—though mine are much more limited than your awesome committee responsibilities—gives me a kind of lift so I do not find it as onerous as it might seem.

The CHAIRMAN. First of all, the Civil Service Reform Act has been an effective law for 1½ years. There has not been an active Panel—you are part of the creation of the Panel that is provided for that makes the resolution of problems between EEOC and the Civil Service; is that right?

Professor JONES. Yes.

The CHAIRMAN. What has been happening over this 1½ years when problems have not found their resolution between the two operating agencies?

Professor JONES. As near as I know, Mr. Chairman, nothing. For one thing, I think there is a slight awkwardness in that I am the man from Mars out there in Wisconsin, and I do not have very much direct communication. I read the trade press, and I believe there is some suggestion that there are potential cases in the pipeline, but nothing, I gather, has ripened to the point that the Panel could be called into service. Unfortunately, if that happened,

the Panel could not be called into service because of the missing piece, which is the Chair.

Additionally, my reading of the legislation suggests that there would necessarily be some rules and regulations that that panel would need in order for it to move forward, particularly since the law provides an opportunity for the complaining party and the concerned agency to participate at the Panel level. It is kind of awkward when you do not have a Chair to write rules and regulations, which I would think would be rather minimal, but would certainly have to be in place before parties could resort to the Panel.

So to that extent, you have a system like a sentence that does not have the period yet, so it is not operative.

The CHAIRMAN. Of course, this Merit Systems Protection Board was not within our committee's legislative jurisdiction, but all the testing laws here, fair labor standards, equal protection, equal opportunity, age discrimination, all of these, are.

Professor JONES. Yes, sir.

The CHAIRMAN. It is quite a long route for a complainant to go through here, as I read just a summary of the steps that might finally lead to Panel action. It is really an appeal first to EEOC, and then it goes back and forth to see if it can be adjusted, and then finally, the lawyer for the complainant says, "Aha, let us go to the Panel." But it looks like a long, long administrative road that must be traversed before it is ripened into the exhaustion of possibilities and ready for Panel action. Does it seem like a cumbersome journey to you?

Professor JONES. Yes. I will take off my potential Chair hat—if that comes to be—and put back on the professorial one. If I were going to design a lazy man's job, I think I would do it slightly differently. It would be full time, full pay, and I leave the rest this way, and I would be reasonably sure that I would not have very much to do.

The CHAIRMAN. Would you get into the situation earlier?

Professor JONES. Well, the real party really can flip it out at any point, as I understand the statute, whenever there is a judicial reviewable action and go on to a Federal court. That is an option. But to go all the way through the steps and get to the Special Panel is a trip that I would be very surprised if more than six cases made it in 6 years.

The CHAIRMAN. Well, that is the way it looks to me.

Professor JONES. I share your view.

The CHAIRMAN. But you would have a greater sensitivity to these procedures, having such a long, long, and broad career in government processes here and the administrative aspects.

But that does not dishearten you to take this position, faced with a situation that looks like it is administratively a difficult situation?

Professor JONES. No; it does not, although that is a very gentle inquiry about why would anybody want to subject himself to this kind of thing. And my answer may sound a little bit hokey, but I, like Wisconsin, share that notion of service. Congress has put this thing in place. We need to have it functional if it is to work. It would obviously be a challenge to come up with something innova-

tive so that it does not become a procedure that is even more cumbersome. The opportunity to try to get the agencies in conflict, as you sit in the middle, to resolve the matter, as Congress has dictated it, amiably, is challenging. The likelihood that we would not meet very often makes it a feasible thing for someone who is a full-time working academic and a part-time weekend soldier, as it were, for matters that I can do for the Federal Government.

So it is in that context that I look at it and say, "Well, somebody ought to be willing to do this," and when approached, I said, "Well, OK, I will do it."

The CHAIRMAN. Now, you talk about working guidelines of regulation. What does the law equip you with in terms of authority, both in promulgation of regulation and in terms of necessary staffing?

Professor JONES. I am not aware that it says anything about the promulgation. It only says that the agency that is affected and the grievant, the two real adversaries, may participate in the Special Panel process. It would seem to me that would necessarily dictate that the agency would have the obligation to tell them, pursuant to the Administrative Procedure Act, how you in fact can do that and what the process would be. That would be my approach, if I were looking at it lawyerlike.

Regarding the other question, staff support is to be provided by the two agencies, which could itself be somewhat of a difficulty, but need not be. But housing, administrative support, is all to come from the two agencies—including, I believe the legislative history says, EEOC as the larger one ought to provide the hearing room.

The CHAIRMAN. What would be your first activity after you are in place as Chairman of the Panel?

Professor JONES. I would want to meet with the chairs of the other organizations and start the process of getting some rules together so they could go in the Federal Register and eventually be published and get that in place. That would be the first order of business. Once that is done, we could then talk about what is the likelihood of dockets and what sort of anticipated participation, and other things.

The CHAIRMAN. One of the activities that interests me to know a little bit more about—and I think it might be an activity, possibly, that we were talking about yesterday in a conference under broad reach of trying to advance greater cooperation between labor, management, and Government, in response to trying to improve productivity in our country. The UAW was mentioned as an organization that has a good record of being part of labor-management cooperation and working toward solutions to productivity problems. I see you have been a member of the UAW's Public Review Board. I wonder if you could give us any sense of the direction UAW and management have been able to advance in terms of a cooperative attitude and an effort toward improving productivity within their work world?

Professor JONES. My familiarity with their efforts is like newspaper familiarity. The public review board is really like a private Supreme Court, and we are distant from anything that they are actually involved in until matters that are contested and have been resolved adversely to the Union member at two stages, or maybe

three, below, and they come to us as an appellate matter. It is a seven-person adjudicatory body. For reasons of neutrality, we sort of maintain a little studied distance from their general activities. But my understanding is that they are willing to experiment with things like Lordstown, with restructuring jobs, with trying to find new ways of doing things that both enrich the workers' jobs, give them a say, and when it goes well, when you like your job, you tend to work more effectively and efficiently. Those kinds of experimental initiatives seem to me to be the direction in which they are moving, wh ch will have implications for productivity. I do not know how well they are doing now. At one time, the Vega, I believe, was being produced, and the production record was somewhat noteworthy. Since those early days, I guess we have had some other kinds of problems that we all have focused on in auto, and I have not seen any evidences of further experimentation. I think that experience obviously leaves a fund of knowledge with them somewhere on both sides that could be usefully tapped.

The CHAIRMAN. With your background, you could be the best authority to indicate to us the obstacles in the way of bringing more of the exchange between labor and management directed toward a cooperative approach to produce a better product. We see examples in other places, in other countries, but they are not working within a system that is comparable to ours—Sweden, West Germany, Japan—not at all as ours is structured, where we really have directed both sides to opposite sides of the table; do you get that sense?

Professor JONES. Yes; I do, indeed. And I suspect that in the future, the next decade or two, we are going to have to take some very, very serious looks at structural aspects of our own system that may be impediments to the kind of cooperation that we must necessarily have.

I am impressed by the Japanese situation. I was watching a TV program not so long ago——

The CHAIRMAN. Was it NBC? We are studying this one, just to see.

Professor JONES. I just caught the very end of it, and there was a dialog between the two parties, and one of the gentlemen said, "But you must remember one thing about Japan that we do not have in America, and that is that the worker has tenure in his establishment." Now, to take that further, if you had tenure in the industry, the natural resistance to efficiency moves is eliminated. Since you do not have to worry about which 10 workers is going out the door if this machine becomes more efficient—we may go out the door, but we go in another one, because, as our whole apparatus does better, we are shifted to other things because, no matter what, we are going to work. It seems to me that is a fundamental problem in our own system that tends to breed distrust and resistance, that if it were not there, it would unlock, then, a great deal more cooperation and concern.

And I think, though, several years ago, the courts at least might have flirted with the idea—somebody was trying to make a case that the worker had, in fact a property right to the job in the industry. One court way back sort of bought the idea. It had more to do with the runaway plants then than what we are talking

about now. But it seems to me that a fundamental problem—is, obviously, a labor leader cannot say, "I can willingly participate in things that are going to cause my members to go out the door and onto the street," at least if he or she wants to be reelected. Those factors, it seems to me, inhibit the business of being able to approach solving a problem of increased productivity, with all your creative energies, because every step, one side thinks, "Ah, that is my job; I am out." So somehow or other, I think we have got to grapple with that in the near term. How, I do not know. It is a fascinating vista for this committee's activities; so are things like worker ownership and various things we see that are coming of necessity. But as is so often the case, it seems to me in our country, we have the problem before we have given much thought to the solution. You know, the plants close down, and then somebody comes forward with the idea of, "Well, wait 1 minute. We can buy this one." It makes a good product, but for some reason, the company does not want it. And I gather you are concerned and looking at ways of facilitating that. I think that is a fascinating future endeavor and one that is vitally needed.

The CHAIRMAN. We are trying to find some models, some examples, that can guide us, like the last example you just mentioned. There are a lot of business reasons for closing up a shop that are not necessarily the fact that they have a product that will not go. We have a good example in New Jersey, but there are so few examples where good products did not quite make the percentage margin within the big combine, so it was expendable from the big, conglomerate view of their organization, and the workers picked it up and are making it go.

Professor JONES. I was just discussing earlier this morning with one of your able young staffers, a few weeks ago I had been thinking of trying to plan a legal education seminar somewhere down the line—I am always trying to put something like this together—and it struck me that we know very, very little about what is needed in a situation, certainly in Wisconsin. If a Steven's Point factory, or whatever, decided it was going to go down, I doubt if there are two lawyers in the State who would know all of the legal problems that would be involved in the workers' attempt to determine if it is still viable, buy in, and how you would go about that. So I have sort of tucked it in the back of my mind, and we should have some educational endeavors on things like this, to get people more broadly aware of what are the nature of the problems. If we do not have immediate answers, somebody should be researching and trying to find out how one does this and then share what we do have.

The CHAIRMAN. Right. I hope that discussion was with Mr. Lindrew; was it?

Professor JONES. It was.

The CHAIRMAN. Good. He is our very valuable staff resource part of this activity that is going on in the Senate now.

Professor JONES. Wisconsin is proud to have him on your staff.

The CHAIRMAN. He stepped out, and he did not hear some of the things you just said. Gerry, you had better read the record here and see what you missed.

Very good.

Now, would there be any conflicts—there are, of course, conflicts of time and other demands—on you if we could call on you for some discussions as we evolve in the area that has come to us as an assignment, this task of trying to define principles and develop broad policy for greater cooperation within all of the elements of the labor, management, and government relationship?

Professor JONES. I perceive none, as wearing a neutral hat for this particular endeavor or in the Federal Service Impasses Panel. My primary contribution from this level and all the way back to my classroom has to do with the long run of labor management, and I could not see any possible conflict in this role.

The CHAIRMAN. Well, I think we would spot any if any developed, if we did get into discussions with you, and we could then act accordingly. But if there were not, we would be greatly helped if we could look to you on occasion for counsel.

Professor JONES. I would be pleased to serve.

The CHAIRMAN. Great.

I have no requests for further questions from other members. We could interpret the lack of other members being here as clearly an indication that you are known and respected, and everybody wants to see you reported favorably from the committee; that is the way I interpret it—not that it is Friday and a very slow day in the Senate, evidently, which leads people back to what sends them here in the first place, the folks at home. There are a lot of absences.

Professor JONES. I appreciate that, Mr. Chairman.

The CHAIRMAN. Thank you very, very much. We will do our best to move this confirmation with dispatch.

The committee is adjourned.

[Whereupon, at 12 p.m., the committee was adjourned.]

○

best copy available